

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

TORTILLA, INC.

Debtor

Case No. 10-10966-s11

**EMERGENCY INTERIM ORDER FOR AUTHORITY TO USE CASH
COLLATERAL
AND ESTABLISHING ADEQUATE PROTECTION**

THIS MATTER comes before the Court on the stipulation between the Debtor, by and through its counsel, Cuddy & McCarthy, LLP (Daniel J. Behles, of Counsel) and the New Mexico Taxation and Revenue Department (“TRD”), by and through its counsel, Gary K. King, Attorney General of the State of New Mexico (James C. Jacobsen, Assistant Attorney General).

The parties agree and represent to the Court as follows::

1. Debtor filed its petition herein under Chapter 11 of the Bankruptcy Code on March 1, 2010, and is operating as a Debtor in Possession under §§1107 and 1108 of the Bankruptcy Code.

2. No Unsecured Creditors’ Committee has been formed at this time.

3. Debtor’s business consists of operating multiple restaurants in the Albuquerque, New Mexico metropolitan area, and related catering and retail and wholesale activities. Debtor operates under the trade name of “Garduno’s of Mexico”.

4. Debtor requires the use of cash collateral to continue the operation of its business. In the course of such operations, Debtors will incur various expenses in the ordinary course of business and expenses of this proceeding which must be paid in order to continue operations and in order to maintain and protect assets of the estate. Use of

cash collateral is necessary, among other things, to pay for labor, utilities, equipment repairs, inventory purchases, insurance, fuel, other expenses incurred in the ordinary course of the Debtor's business, and professional fees and expenses incurred in connection with this bankruptcy case. A copy of Debtor's tentative budget for the 60 days post-petition is attached hereto as exhibit A. Without authority to use cash collateral, the Debtor will be unable to make payroll, operate its business, or administer this bankruptcy case, and would be forced to cease operations.

5. On March 2, 2010, with the consent of TRD, the Court entered an Order authorizing the debtor to pay the payroll due Wednesday, March 3, 2010, which consists of hourly wages due all employees for pre-petition services. The agreement and budgets reflected by this order will authorize the payment of future payrolls which include, in part, payment for wages and benefits earned pre-petition, as well as post petition expenses.

6. The only creditor which is believed to have a claim which is secured by cash collateral is TRD.

a. Counsel for the TRD has informed counsel for the Debtor that tax liens have been filed against the debtor as shown on Ex. B attached hereto.

b. As such, the TRD has a perfected statutory lien on all of the Debtor's property, including its inventory and the proceeds generated by the sale thereof.

c. Debtor believes that no other parties claim a cash collateral interest.

7. Counsel for TRD has agreed to stipulate to Debtor's use of cash collateral, so long as the interests of TRD are protected herein as follows:

a. Debtor will, and hereby does, grant post-petition, continuing and replacement

liens on post- petition inventory, accounts, equipment, intangibles, proceeds and profits to secure the use of cash collateral, with such liens on post-petition assets to be subject to any claims, defenses or avoiding powers that the pre- petition lien of TRD might be subject to, and with such post-petition liens having the same validity and priority as the liens existing at the time of the filing of the petition. No recordation or other filing is required to perfect such post-petition liens.

b. Debtor will make adequate protection payments to the TRD in the amount of \$12,591.94 per month, payable on the 20th of each month. The first of such payments will be due on April 20, 2010.

8. It is necessary to grant this authority on an interim emergency basis, subject to the notice and objection provisions set forth below, to preserve the going concern value of the debtor's business and to preserve the value of the assets of the estate for all creditors.

IT IS THEREFORE ORDERED that:

1. Debtor may use cash collateral only for ordinary operating expenses in the course of running its business. This authorization specifically includes the authority to issue payrolls on March 10, 2010 and March 17, 2010 which will include payment to all employees for wages and benefits earned in part pre-petition. Additionally, Debtor may use cash collateral for the payment of professional fees and administrative expenses incurred in connection with this bankruptcy case.

2. Debtor's authority to use cash collateral shall be conditioned on:

a. Debtor granting the TRD post-petition, continuing and replacement liens on post-petition inventory, accounts, equipment, intangibles, proceeds and profits to

secure the use of cash collateral. The lien is effective upon entry of this Order. No additional filing or recording of notice is required to perfect TRD's post-petition replacement liens.

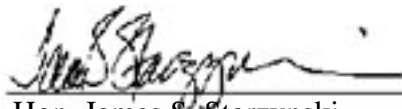
b. Debtor making adequate protection payments to the TRD in the amount of \$12,519.94 per month, payable on the 20th of each month. The first of such payments will be due on April 20, 2010.

c. Debtor reporting and paying all State Taxes incurred during the administration of this case on a timely basis.

3. The Debtor's failure to comply with the provisions of Sub-Paragraphs 2 (b) and (c) above shall constitute an event of default. In the event the Debtor does not cure an event of default within five (5) days after written notice transmitted to Debtor's Counsel electronically, the Debtor's permission to use cash collateral shall terminate.

4. This order does not constitute the waiver or preclusion of any rights or claims of Cash Collateral Claimants to seek further relief with respect to the subject matter hereof, or with respect to any other matter, and that it likewise shall not constitute the waiver of preclusion of any rights of the Debtor.

5. The Debtor will promptly give the fourteen (14) day notice as required by Rule 4001(d). Any objections to this order will be heard on an expedited basis. In the absence of any timely filed objections, this interim order will become a final order.


Hon. James S. Starzynski

Entered on Docket Date: March 4, 2010

Prepared and Submitted by:

Cuddy & McCarthy, LLP

Submitted via e-mail

Daniel J. Behles, of Counsel

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APPROVED BY:

New Mexico Taxation and Revenue Department

/s/ Jim Jacobsen,

Approved by telephone 3/4/2010

Office of the Attorney General

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COPY OF ORDER TO:

Ron Andazola

Office of the United States Trustee

PO Box 608

Albuquerque, NM 87103-0608

Ronald.Andazola@usdoj.gov

[illegible]

Tortilla, Inc. Cash Flow

		Thu 4/1	Fri 4/2	Sat 4/3	Sun 4/4	Mon 4/5	Tue 4/6	Wed 4/7	Thu 4/8	Fri 4/9	Sat 4/10	Sun 4/11	Mon 4/12	Tue 4/13	Wed 4/14	Thu 4/15	Fri 4/16	Sat 4/17	Sun 4/18	Mon 4/19	Tue 4/20	Wed 4/21	Thu 4/22	Fri 4/23	Sat 4/24	Sun 4/25	Mon 4/26	Tue 4/27	Wed 4/28	Thu 4/29	Fri 4/30	Total Item	
Cash on Hand		-8,778	-6,095	17,956	42,798	61,674	49,646	61,268	37,138	50,196	58,373	52,596	33,527	26,877	35,942	19,782	45,917	47,786	61,790	59,560	47,620	57,849	36,379	51,570	78,809	49,033	47,569	36,012	45,205	26,627	40,596		
CASH RECEIPTS																																	
Income	Net Sales		14,981	24,699	25,348	19,260	9,842	11,134	13,324	22,264	21,239	14,356	12,133	9,249	14,094	14,422	24,493	24,744	19,786	9,445	10,437	13,952	15,501	27,944	26,416	22,510	11,161	9,379	12,533	14,253	23,030	503,789	
	Credit Card Fees	2.00%	-299	-493	-506	-384	-196	-236	-222	-265	-444	-424	-286	-242	-184	-281	-287	-489	-494	-395	-188	-208	-278	-309	-558	-527	-449	-222	-187	-250	-284	-460	
	Royalties											8,000					12,000																20,000
	TOTAL CASH RECEIPTS		14,683	24,206	24,842	18,876	9,646	11,622	10,913	13,059	21,819	28,815	14,070	11,891	9,065	13,813	26,135	24,004	24,250	19,391	9,257	10,229	13,674	15,192	27,386	25,889	22,061	10,939	9,192	12,283	13,969	22,571	513,743
Total Cash Available (before cash out)			5,905	18,111	42,798	61,674	71,320	61,268	72,180	50,196	72,016	87,188	66,667	45,418	35,942	49,755	45,917	69,920	72,036	81,181	68,817	57,849	71,523	51,570	78,957	104,697	71,094	58,508	45,205	57,488	40,596	63,167	
CASH PAID OUT																																	
COGS	Percent of Net Sales																																
	Food Purchases (77% of Net Sales)	77.50%	21,674																														
	Liquor Purchases (22.5% of Net Sales)	22.50%	5,929																														
	Retail Purchases (.5% of Net Sales)	0.50%	144																														
Labor	Kitchen Managers	2.43%	2,842																														
	Kitchen Hourly	11.52%	13,496																														
	Executive and Admin		11,923																														
	Maintenance	1.61%	1,887																														
Dining Room	5.87%	6,876																															
Bar	1.76%	2,057																															
Floor Managers	4.27%	11,000																															
Payroll Tax (6.2% of Gross Pay)		1,684																															
Workers Comp (1.0% of Gross Pay)		272																															
Expenses	Advertising	0.68%	3,424																														
	CAM/Maintainance	5.00%	2,000																														
	Cash Register Supplies	0.07%	130																														
	Casual Labor	0.11%	186																														
	China & Glassware	0.35%	606																														
	Computer Services	0.24%	410																														
	Decorations	0.01%	22																														
	Dish Machine Supplies	0.42%	738																														
	Electric	2.00%	3,479																														
	Employee Motivation	1.00%	1,739																														
	Entertainment	0.02%	38																														
	Equipment Lease	0.05%	82																														
	Gas	1.50%	2,609																														
	Insurance	2.00%	12,000	3,479																													
	Janitorial Supplies	0.35%	605																														
	Laundry & Linen	0.07%	122																														
	Legal & Accounting	1.00%	1,739																														
	Licenses & Permits	0.25%	439																														
	Meals & Entertainment	0.10%	180																														
	Menus	0.04%	68																														
	Music	0.09%	151																														
	Musicians	0.91%	1,577																														
	Office Supplies	0.15%	254																														
	Outside Services	0.01%	26																														
	Paper & Sundry	1.67%	2,902																														
	Pest Control	0.14%	245																														
	Plant & Lawn Service	0.21%	364																														
	Postage	0.02%	38																														
	Printing	0.02%	27																														
	Promotion Expense	0.06%	97																														
	R & D Menu Items	0.01%	18																														
	R & M - Equipment	0.84%	1,462																														
	R & M - General	0.83%	1,452																														
	Recruiting	0.10%	176																														
	Rent	7.16%	20,000																														
	Restaurant Supplies	1.01%	1,762																														
	Security	0.07%	125																														
	Silver & Utensils	0.25%	442																														
	Small Equipment	0.04%	63																														
	Product Shrinkage	0.03%	59																														
Taxes	0.51%	884																															
Telephone	0.19%	339																															
Trash/Sewer	1.00%	1,739																															
Uniforms	1.00%	1,739																															
Water	0.30%	525																															
SUBTOTAL			12,000	155		21,674		35,043		13,643	22,000	33,139	18,541		29,973		22,135	10,246	21,621	21,198		35,144		148	55,665	23,525	22,496		30,861		3,580		
Other	Loan principal payment																																
	Capital purchase (specify)																																
	Other startup costs																																
	NMTR Payments										12,592																						
TOTAL CASH PAID OUT			12,000	155		21,674		35,043		13,643	34,592	33,139	18,541		29,973		22,135	10,246	21,621	21,198		35,144		148	55,665	23,525	22,496		30,861				
Cash Position (End of Day)			-6,095	17,956	42,798	61,674	49,646	61,268	37,138	50,196	58,373	52,596	33,527	26,877	35,942	19,782	45,917	47,786	61,790	59,560	47,620	57,849	36,379	51,570	78,809	49,033	47,569	36,012	45,205	26,627	40,596	63,167	